

SYLVESTER & POLEDNAK, LTD

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

<p>In re:</p> <p>USA COMMERCIAL MORTGAGE COMPANY (fka USA CAPITAL) Debtor.</p>	<p>Case No. BK-S-06-10725-LBR Case No. BK-S-06-10726-LBR Case No. BK-S-06-10727-LBR Case No. BK-S-06-10728-LBR Case No. BK-S-06-10729-LBR</p>
<p>In re:</p> <p>USA CAPITAL REALTY ADVISORS, LLC. Debtor.</p>	<p>Chapter 11</p> <p>Jointly Administered Under Case No. BK-S-06-10725-LBR</p>
<p>In re:</p> <p>USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC. Debtor.</p>	
<p>In re:</p> <p>USA CAPITAL FIRST TRUST DEED FUND, LLC. Debtor.</p>	<p><u>MOTION TO ENFORCE ORDER GRANTING DEBTORS' MOTION TO DISTRIBUTE FUNDS</u></p>
<p>In re:</p> <p>USA SECURITIES, LLC. Debtor.</p>	
<p>Affects:</p> <p><input checked="" type="checkbox"/> All Debtors</p> <p><input type="checkbox"/> USA Commercial Mortgage Company</p> <p><input type="checkbox"/> USA Capital Realty Advisors, LLC</p> <p><input type="checkbox"/> USA Capital Diversified Trust Deed Fund, LLC</p> <p><input type="checkbox"/> USA Capital First Trust Deed Fund, LLC</p> <p><input type="checkbox"/> USA Securities, LLC</p>	<p>Hearing Date: November 13, 2006 Hearing Time: 9:30 a.m.</p>

USA Commercial Real Estate Group, Inc., by and through its attorney, Jeffrey R. Sylvester, Esq., of the law firm of Sylvester & Polednak, Ltd., hereby moves this Court for an order compelling

the Debtors to distribute the funds to USA Commercial Real Estate Group pursuant to that order [Docket No. 1184] entered August 24, 2006, granting Debtors' Motion to Distribute Funds.

This Motion is made and based upon the attached Points and Authorities, the papers and pleadings on file herein, and any oral argument that the Court may entertain at the time of any hearing on this Motion.

DATED this 27th day of September, 2006.

SYLVESTER & POLEDNAK, LTD.

By /s/ Jeffrey R. Sylvester
Jeffrey R. Sylvester, Esq.
7371 Prairie Falcon Road, Suite 120
Las Vegas, Nevada 89128

POINTS AND AUTHORITIES

I.

FACTUAL BACKGROUND

1. Debtors commenced their respective bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006 (the "Petition Date"). The cases are being jointly administered, along with the Chapter 11 cases of two other affiliates of the Debtors', pursuant to an order of this Court.

2. Prior to the Petition Date, USA Commercial Mortgage Company ("USA") was primarily in the business of originating, brokering and servicing commercial real estate loans and fractional interest therein.

3. As of the Petition Date, USA was the loan servicer for approximately 115 commercial loans having a combined outstanding balance of approximately \$962,000,000 which were secured by various real estate projects and/or developments.

4. As of the Petition Date, there were in excess of 3,600 loan investors (the “Direct Lenders”) whose names appear as “lender” for one or more of the loans.

5. USA Commercial Real Estate Group is a Direct Lender as its name appears as “lender” for one or more of the loans.

6. As of the Petition Date, USA held approximately \$9,000,000 in its loan servicing accounts.

7. On July 7, 2006, Debtors filed a motion seeking permission to distribute to Direct Lenders a substantial portion of the funds held in the collection account.

8. On August 24, 2006, this Court entered an Order granting Debtors’ Motion to Distribute Funds [**Docket No. 1184**] held in the collection account. The Order granting the Debtors’ Motion provided, in relevant part, as follows:

2. To the extent applicable, USA Commercial Mortgage Company (“USACM” is authorized to make an interim distribution (“Interim Distribution”) from (i) the post-petition collections deposited in the Collection Account for the period through June 30, 2006 and (ii) \$6,070,445.14 of the pre-petition amounts that were in the Collection Account on the Petition Date--as approved by each of the official committees appointed in these cases, to each of USA Capital Diversified Trust Deed Fund, LLC (“Diversified”), USA Capital First Trust Deed Fund, LLC (the “FTD Fund”) and each of the other Direct Lenders (collectively, “Lenders” and each a “Lender”) as calculated by the Debtors in connection with the Direct Lender Statements prepared as of June 30, 2006 and recently mailed to Direct Lenders...

9. Debtors forwarded to USA Commercial Real Estate Group a statement setting forth the proposed distribution wherein Debtors proposed to pay to USA Commercial Real Estate Group the sum of \$17,578.84 as and for a partial distribution.

10. Despite the Order of the Court, Debtors have failed and refused, and continue to fail and refuse, to remit the authorized distribution to USA Commercial Real Estate Group.

11. USA Commercial Real Estate Group has demanded that the Debtors remit the

distribution but the Debtors had refused, and continue to refuse, to distribute the Court-authorized distribution.

A. This Court should Enter an Order Compelling the Debtors to Make the Required Distribution.

1. As set forth above, this Court granted the Debtors' motion to distribute funds and grant ordinary course releases and distribute proceeds by order entered August 24, 2006 [**Docket No. 1184**]. Despite the order permitting the Debtor to make distributions to Direct Lenders, including USA Commercial Real Estate Group, the Debtor has refused, and continues to refuse, to remit the permitted distribution.

2. Section 11 U.S.C. §105(a) grants the Bankruptcy Court the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code and take, "any action or make any determination necessary to enforce or implement court orders or rules, or to prevent an abuse of process."¹

3. USA Commercial Real Estate Group is a Direct Lender as that term is defined by the Debtors in the Debtors' Motion to Distribute Funds and to Grant Ordinary Course Releases and Distribute Proceeds. As a Direct Lender, USA Commercial Real Estate Group was, according to the Debtors, entitled to receive the sum of \$17,578.84 as a for an interim distribution. Inexplicably, however, the Debtor has failed to make the distribution and has proffered no explanation permitting the Debtors' deviation from the terms and conditions of the order permitting distribution.

¹11 U.S.C. §105(a) provides:

Power of the Court. The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Accordingly, USA Commercial Real Estate Group requests this Court enter an order compelling the Debtors to issue the distribution.

II.

CONCLUSION

In light of the foregoing, USA Commercial Real Estate Group seeks and order compelling the Debtors to perform pursuant to this Court's Order granting Debtors' motion to distribute funds [Docket No. 1184] entered August 24, 2006, and to award any such other further relief as the Court deems just and proper.

DATED this 27th day of September, 2006.

By: /s/ Jeffrey R. Sylvester
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